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November 25, 2008

VIA HAND DELIVERY

Jeff Jordan, Esq.
Supervisory Attorney
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 6120 (*Freedom's Watch, Inc.*)

Dear Mr. Jordan:

On behalf of Freedom's Watch, Inc. ("FW"), this responds to the complaint filed by the Democratic Party of New Mexico ("DPNM") in the above-captioned matter. Consisting largely of political rhetoric, the complaint alleges improper "coordination" with the Republican Campaign Committee of New Mexico ("RCCNM") over one image in a FW advertisement titled "Asked to Explain." Although FW's consultant obtained this readily obtainable photo on the Internet from a publicly available source, the complaint alleges improper coordination based on an identical image being used in an advertisement produced by the RCCNM. As demonstrated below, there was no impermissible coordination and dismissal of this complaint is required.

It is true that Steven's, Reed, Curcio & Potholm, ("SRCP") worked for both FW and RCCNM. It is also true that SRCP operated under and strictly followed a firewall policy compliant with the Federal Election Commission's guidance in this area. See 11 C.F.R. 109.21(h). The affidavit of Paul Curcio, the SRCP partner who assisted FW on creating and producing "Asked to Explain", attests to the adherence to the firewall policy, which is also attached. Affidavit of Paul Curcio (attached as Exhibit A) at ¶ 1; Exhibit B (Freedom's Watch Vendor Firewall Policy); Exhibit C (SRCP Internal Firewall Policy).

The affidavit shows that Curcio did not work on the RCCNM advertisement "Can't Trust" that was also produced by SRCP, and did not know of its existence until it aired publicly. Exhibit A at ¶ 4. More, specifically, Curcio states in his sworn affidavits that, because of the provisions of both SRCP's and FW's written firewall policies (Attached as Exhibit C), he did not have any communication or discussion

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with anybody involved with or employed by Darren White's campaign or the RCCNM regarding Freedom's Watch advertisements. Id. at ¶ 4, 7.

In his affidavit, Curcio specifically states that he had no communications with the RCCNM or his partner Ben Burger regarding the preparation of the "Asked to Explain" script or for any other script for a FW advertisement nor did he have any communications with the RCCNM or Ben Burger regarding any other matter pertaining to FW's plans or strategies. Id. at ¶4, 7. Per Curcio's affidavit, Ben Burger at SRCP partner was the partner who had been engaged to assist the RCCNM with creating advertisements. Id. at ¶ 4. While it is clear that another individual within SRCP (Burger) did work for RCCNM, Curcio testifies that, at the time when he worked on the FW advertisement "Asked to Explain," he was unaware of Burger's work because of the firewall policies, did not have any communications with the "walled off" Burger concerning the RCCNM matter or FW matter, and this further evidences the effectiveness of both FW's written vendor firewall policy and SRCP's internal firewall policy. Id. at ¶ 4.

As for the similarity between the two pictures that were allegedly contained in both the "Asked to Explain" and "Can't Trust" advertisements, in his affidavit, Curcio specifically states that he independently obtained this photograph from an internet search of the public domain and used a publicly available image of Martin Heinrich in "Asked to Explain." Id. at ¶ 8. Curcio also states that the RCCNM did not provide him with the specific image of Martin Heinrich used in "Asked to Explain" and he did not communicate with any other individuals at SRCP not working with him on the FW matter regarding the plans needs and strategies for the production of the FW advertisement "Asked to Explain." Id. at ¶ 7-8.

The complaint also contains an unfounded allegation of coordination concerning Carl Forti, who is FW's Executive Vice President of Issue Advocacy (and not its "head," as the DPNM incorrectly alleges). Forti did work for the NRCC prior to 2007, ending his employment there on or about December 31, 2006. Forti became FW's Executive Vice President of Issue Advocacy in March of 2008. With respect to any coordination concerns over former employment, 11 C.F.R. 109.21(d)(5) provides that the coordination regulations are only applicable as applied to former employees where the "communication is paid for by a person, or by the employer of a person, who was an employee or independent contractor of the candidate who is clearly identified in the communication, or the candidate's authorized committee, the candidate's opponent, the opponent's authorized committee, or a political

party committed during the previous 120 days." Carl Fortl clearly stopped working for the NRCC well beyond 120 days prior to starting working at FW. Accordingly, this charge must fail.¹

Several additional baseless allegations flung into the Complaint have no basis. First, it alleges that RCCNM made, and Darren White's campaign accepted an illegal in-kind contribution. FW is without knowledge as to this allegation since it has not had any communications with either RCCNM or Darren White on this matter.

Second, the Complaint erroneously alleges that Freedom's Watch made, and RCCNM accepted, an illegal in-kind contribution to RCCNM. However, since FW specifically denies the coordination allegation, no in-kind contribution could possibly have been made. Therefore, this allegation is insufficient as a matter of law and should be summarily dismissed.

The Complaint thirdly insinuates that FW may have failed to register as a Political Committee with the FEC, an allegation that FW specifically denies is even applicable since coordination did not occur. It should be summarily dismissed.

Finally, the complaint alleges that Darren White, RCCNM, and FW may have failed to properly report Coordinated Communications, an allegation that FW specifically denies knowledge of as it applies to RCCNM and Darren White and further specifically denies is pertinent to FW as coordination did not occur. It should be summarily dismissed.

FW has consistently exercised its First Amendment rights as specifically recognized on numerous occasions by the United States Supreme Court, most recently in Fed. Elec. Comm'n v. Wisconsin Right to Life, 127 S.Ct. 2652, 2666 (2007) ("The freedom of speech...guaranteed by the Constitution embraces at least the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment.") (citations omitted). As was widely reported on by news organizations during the fall months of 2007, FW made significant investments of its resources in running advertisements that supported the American troops in their efforts in Iraq and supported the efforts of our military leaders in their efforts to direct our country's efforts in Iraq. FW has been a consistent voice on the issue of United State public policy regarding the War on Terror and our country's efforts in Iraq. In addition, FW has been actively engaged in the public policy debate on other critical issues such as tax relief, gas prices, ethics law compliance, and federal immigration policy.

¹ In order to satisfy the "conduct" prong of the coordination analysis based on FW having hired an employee or independent contractor of the NRCC, Fortl would, at the very least, had to have worked at the NRCC within 120 days of joining FW- a critical fact that undermines any argument by the DPNM that FW has coordinated with the NRCC, much less the RCCNM, by virtue of Fortl's employment at FW. See 11 C.F.R. 109.21(d)(5)(i).

In conclusion, there is no evidentiary basis for concluding that FW engaged in any type of communication with the RCCNM regarding the "Asked to Explain" advertisement. Thus, FW disputes and, by this response, specifically refutes the DPNM's allegations. This response, along with all attachments and exhibits hereto, provides a sufficient and complete basis for the Commission to dismiss this Complaint without any further investigation.

Sincerely,

A handwritten signature in black ink that reads "W. Ryan Teague". The signature is written in a cursive, flowing style.

W. Ryan Teague

Freedom's Watch General Counsel

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